

Chesapeake Bay Local Assistance Board
Local Program Review Committee for the Northern Area
Department of Conservation and Recreation
101 N. 14th Street, 17th Floor, James Monroe Building
Richmond, Virginia
Tuesday, August 10, 2004

DRAFT MINUTES

NARC Members Present

Mr. David L. Bulova
Mr. William E. Duncanson

Mr. Donald W. Davis
Mr. Walter J. Sheffield

DCR Staff Present

Mr. Joseph H. Maroon, Director
Mr. C. Scott Crafton, Director, Division of Chesapeake Bay Local Assistance
Ms. Martha Little, Chief of Environmental Planning
Ms. Shawn Smith, Principal Planner
Ms. Heather Mackey, Principal Planner
Ms. Nancy Miller, Senior Planner
Mr. Alex Adams, Senior Planner
Ms. Beth Baldwin, Senior Planner
Mr. Brad Belo, Senior Planner
Mr. Jakob Helmboldt, Senior Planner
Ms. Caroline Elliott, DCR Administration Specialist
Mr. Michael Fletcher, DCR Director of Development

Local Government Officials Present

City of Falls Church

Ms. Helen Reinecke-Wilt, Senior Planner
Ms. Elizabeth Friel, Director of Planning and Development

Prince William County

Ms. Patty Dietz, Senior Environmental Engineer
Mr. Wade Hugh, Chief Watershed Management Branch, Dept. of Public Works and
Environmental Services

Town of Urbanna

Mr. Dianne Franck, Assistant Administrator

Town of West Point

Mr. Andy Conklin, Mayor

Mr. Davis called the meeting to order at 10:01 a.m. and declared a quorum present.

He noted that the Chesapeake Bay Local Assistance Department has been merged with the Department of Conservation and Recreation. Mr. Crafton is now the Acting Director of the Division of Chesapeake Bay Local Assistance. Mr. Davis introduced Mr. Joe Maroon, Director of the Department of Conservation and Recreation.

Local Program Reviews

Ms. Mackey presented the following summary regarding the Town of Occoquan:

The Town of Occoquan originally adopted its Phase I program in June 1991. The Board found it consistent in October 1991. Department staff reviewed the Town's ordinance and provided comments consistent with the revised Regulations in September 2002. The Town adopted revisions to its ordinance on February 18, 2003. Department staff reviewed and commented on the adopted ordinance in October 2003, finding several items that needed revisions in order for the amended Bay Act ordinance to be found consistent. The Town Council held a public hearing to consider the proposed changes and on February 17, 2004 adopted a final revised Bay Act ordinance.

Although the Town's revised ordinance addresses most of the required changes including revisions to definitions, Resource Protection Area designation language, site-specific RPA delineation requirements, and the requirements for a formal process for all RPA exception requests, there are two recommendations for consistency. While they are technical in nature, the recommended revisions are necessary to bring the language of Occoquan's ordinance into compliance with the Regulations.

The first recommendation is to include the definition of "substantial alteration," in the ordinance, consistent with the definition in the Regulations. This is necessary because the term substantial alteration is used within the definition of development, a key element of the Bay Act that is included in the Town's ordinance.

The second recommendation concerns the Regulatory requirement that the development of new or expanded water-dependent facilities in RPAs must include the criteria that they do not conflict with the comprehensive plan, that access to the water-dependent facility will be provided with the minimum disturbance necessary, and that where practicable a single point of access will be provided as outlined under §9 VAC 10-20-130.1.b(1) and (4) of the Regulations. The Town's ordinance only included two of the four required subsections.

In conclusion, the basic requirements of the Town's Chesapeake Bay program are in place, and these changes will not prohibit the Town from implementing their program as intended. Staff recommends that the Town of Occoquan's Bay Act ordinance be found consistent provided that the Town undertake and complete the two recommended revisions identified in the staff report by December 31, 2005.

Mr. Bulova asked if the deadline given would allow the Town to take proper action, taking into consideration the need for public notice. Ms. Mackey responded that it should be sufficient time.

Mr. Davis asked if the town was in agreement.

Ms. Mackey said that she has corresponded with the town via letter, but has not received a response. She noted that she did not anticipate objections from the town.

MOTION: Mr. Duncanson moved that the Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Occoquan's amended Phase I program be found consistent with §10.1-2109 of the Act and §9 VAC 10-20-60.1 and 2 of the Regulations subject to the conditions that the Town undertake and complete the two (2) recommendations contained in the staff report no later than December 1, 2005.

SECOND: Mr. Sheffield

DISCUSSION: None.

VOTE: Motion carried unanimously.

Ms. Mackey presented the following summary on the Town of Haymarket.

The Town of Haymarket originally adopted its Phase I program in June 1993. The Board found the Town's program to be consistent in October 1993. Department staff reviewed the Town's ordinance and provided comments consistent with the revised Regulations in March and August 2003. The Town adopted a revised ordinance on January 12, 2004. The Town's revised Bay Act ordinance addresses all of the required changes, including revisions to definitions, RPA designation language, site-specific RPA delineation requirements, and the requirements for a formal process for all RPA exception requests. The Town chose to administer the RPA exceptions through their Town Council. The Town retained its original CBPA designation, which includes an RPA adjacent to all known streams in the Town and the balance of the Town as an RMA. There are no IDAs in the Town. Staff recommends the local program amendments adopted by the Town of Haymarket on January 12, 2004 be found consistent with the requirements of the Act and Regulations.

MOTION: Mr. Duncanson moved that the Northern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Haymarket's amended Phase I program on January 12, 2004 be found consistent with § 10.1-2109 of the Act and § 9VAC 10-20-60.1 and 2 of the Regulations.

SECOND: Mr. Sheffield.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Ms. Mackey introduced Ms. Helen Reinecke-Wilt and Ms. Elizabeth Friel representing the City of Falls Church.

Ms. Mackey presented the following summary for the City of Falls Church.

The City of Falls Church originally adopted its Phase I program in November 1990 and amended it a year later. The Board found the City's program consistent on December 1, 1994. Department staff provided initial comments on changes necessary for compliance with the revised Regulations in January 2002 and on numerous occasions prior to the City's final adoption of a revised Bay Act ordinance on February 9, 2004.

Although the City's adopted ordinance addresses most of the required changes including revisions to definitions, RPA designation language, the site-specific RPA delineation requirements, and the requirement for a formal process for all RPA exceptions, there is one recommendation for consistency.

Section 38-42(j)(1)d. of the City code permits placement of BMPs within the RPA upon approval by the City. The City is asked to amend their ordinance to include the language from Section 9 VAC 10-20-130.1.e of the Regulations which specifically states that stormwater management facilities may be allowed in the RPA provided that the facility is consistent with a stormwater management program that has been approved by the Chesapeake Bay Local Assistance Board as a Phase I modification to the local government's program. At this time, Falls Church's stormwater management program has not been reviewed and approved by the Board as a Phase I modification, therefore BMPs may not be permitted by-right in the RPA. Placement of BMPs in the RPA may occur if they are reviewed and approved by the City Planning Commission through the exception process, as outlined in Section 38-42(r)(5) of the City code.

In conclusion, the basic requirements of the City's Chesapeake Bay program are in place, and this change will not prohibit the City from implementing their program as intended. Staff recommends that the Falls Church Bay Act ordinance be found consistent provided that the City undertake and complete the recommendation identified in the staff report by December 31, 2004.

Mr. Davis asked if the City had enough time to be able to implement these changes.

Ms. Friel, representing the City responded that the City was already working on the recommendations.

Mr. Bulova asked a question regarding the procedure. He asked what the process was for the local review program.

Ms. Little noted that several localities have developed regional stormwater programs. They work with the staff. As a Phase I modification this regional program would come before the Board for approval.

Mr. Crafton noted that essentially what these localities demonstrate to the Board is an alternative way to achieve the same level of water protection.

Mr. Davis noted that the Board has encouraged regional BMPs to be put into place by localities.

Mr. Davis asked a question regarding the requirement that BMPs fall outside the RPA. He asked about pre-1989 lots where there was no option for the BMP location but within the RPA.

Mr. Crafton said there were two separate issues. One is a site-by-site issue. For example if there is a pre-1989 lot and a small BMP is proposed as part of the mitigation for the encroachment, that is part of the administrative review. The issue that Ms. Mackey was addressing is the larger regional scale BMPs that are proposed. What this provision says is that in order to cite those BMPs localities must demonstrate that this is part of a master plan, approved by the Board.

MOTION: Mr. Sheffield moved that the Northern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the City of Falls Church's amended Phase I program be found consistent with § 10.1-2109 of the Act and §9 VAC 10-20-60.1 and 2 of the Regulations subject to the condition that the City undertake and complete the one (1) recommendation contained in the staff report no later than December 31, 2004.

SECOND: Mr. Duncanson.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Adams presented the following summary for the City of Fredericksburg.

The City of Fredericksburg originally adopted its Phase I program on August 24, 1993. Fredericksburg's Phase I Program was reviewed by the Chesapeake Bay Local Assistance Board and found consistent on October 5, 1993.

The Department worked closely with Mr. Ray Ocel, Planning Director for the City, who is in attendance today to answer any questions from Board members. The City currently has their Bay Act regulations within 7 sections of the City's general zoning ordinance. The City has debated making their ordinance a separate document however they have not had the staff time to complete this task. Additionally, the City has decided not to include an exceptions process due to their perception that the current Regulations give enough flexibility, the City is mostly built out and new properties are not allowed reductions in RPA areas. The City does have an IDA along the riverfront.

Staff met with the City on two occasions and wrote several sets of comments beginning in April 2002 and with Mr. Ocel since November 2003 when he became Planning Director. The City approved their ordinance at the Board of Supervisors meeting on March 23, 2004. Staff recommends that the City of Fredericksburg's revised Bay Act ordinance be found inconsistent, with 10 conditions for consistency.

The City has omitted large sections of the Regulations from being incorporated into the revised zoning ordinance. Included in these requirements are site the criteria for specific determinations of water bodies with perennial flow, the conditions to permit water dependent uses within the RPA buffer, conditions for approving encroachments on lots built prior to 1989, provisions for administrative waivers to the general performance criteria, provisions for the expansion of nonconforming structures, and add the criteria for allowing the exemption of public roads.

After talking with the City it appears they were unaware of the associated provisions required with several of these sections of the Regulations or were under the perception that they did not need some of the waivers and other relief procedures. Mr. Ocel has indicated that he is amenable to these changes and we have talked about the City's position and understand that they are trying to be very strict on allowing flexibility from the Regulations language and intent. The Division would like to thank the City of Fredericksburg for adopting an ordinance and continuing to work with the staff supporting the Chesapeake Bay Preservation Act.

Mr. Davis asked if the city was in agreement with the recommendations.

Mr. Adams said that the city has seen the conditions but staff has not received a response.

Mr. Crafton noted that at the June Board meeting Mr. Sheffield inquired as to whether staff had received the revised ordinance from Fredericksburg. At that time it had not been received, and Mr. Sheffield asked that Mr. Crafton write a letter requesting a copy of the ordinance revisions for staff to review. This was done, but the copy was provided late enough that staff did not have as much time as usual to review it. He noted that staff understanding is that the city intends to run a strict program. Their view was that they did not need everything provided in the staff's recommendations. Staff is concerned that

if circumstances arise that they are not anticipating there may be a need for a missing provision that would apply.

Mr. Sheffield noted that there has been a political change in the City of Fredericksburg. He said that previously the City Council has been very indifferent. He said it was his belief that the new Council will pay closer attention to the issue.

Mr. Davis noted a concern of the date of December 31, 2004 when no response has been received from the city.

Ms. Little said that it was the critical nature of the issues that led to the December date. Mr. Crafton said that staff could propose to leave the date as indicated and that representatives from the city be invited to the September Board meeting to address any concerns.

Mr. Davis asked the method in which the city would be contacted if the draft resolution was approved.

Mr. Crafton noted that a letter will be sent to each locality with the committee recommendations and an excerpt from committee minutes. The localities will receive an official notification of the September meeting.

MOTION: Mr. Duncanson moved that the Northern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the City of Fredericksburg's amended Phase I program be found inconsistent with § 10.1-2019 of the Act and § 9VAC 10-20-60.1 and 2 of the Regulations and further that the City of Fredericksburg undertake and complete the 10 recommendations contained in the staff report no later than December 31, 2004.

SECOND: Mr. Bulova.

DISCUSSION: Mr. Sheffield noted that he would abstain from the vote.

VOTE: Motion carried with Mr. Sheffield abstaining.

Mr. Adams presented a summary for the Town of Port Royal.

The Town of Port Royal originally adopted its Phase I program on October 17, 1995. Port Royal's Phase I Program was reviewed by the Chesapeake Bay Local Assistance Board and found consistent on December 12, 1995.

The Department worked closely with Mr. Stephen Manster from the Rappahannock Area Development Commission and Mr. Alex Long of Port Royal developing the revised

ordinance. I meet with the Town's planning commission in November to discuss the changes that needed to be made and Mr. Manster facilitated revising the ordinance for the Town. The Town has a very limited RPA area along the Rappahannock River affecting approximately 10 lots in the Town and their RMA area is mapped adjacent to these areas. The Board of Zoning Appeals has been identified to hear all formal exceptions to this revised ordinance.

Staff recommends that the Town of Port Royal's revised Bay Act ordinance be found consistent, subject to the three conditions. It is the opinion of staff that while there are two conditions and two suggestions for consistency, none of the omissions will have a detrimental effect on the Town's implementation of its Bay Act Program. The recommendations clarify the conditions that must be met for nonconforming uses and exceptions to be approved within the RPA. The suggestions to allow exceptions to areas of the ordinance outside of the lot size and the buffer area requirements gives the Town's staff the flexibility to meet the intent of the regulations and balance the needs of development within the Town on atypical situations. The Department would like to thank the Town of Port Royal and the Rappahannock Area Development Commission for their continued support of the Chesapeake Bay Preservation Act.

MOTION: Mr. Sheffield moved that the Northern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the Town of Port Royal's amended Phase I program be found consistent with § 10.1-2019 of the Act and § 9VAC 10-20-60.1 and 2 of the Regulations subject to the conditions that Port Royal undertake and complete the two recommendations in the staff report no later than September 30, 2005.

SECOND: Mr. Duncanson.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Ms. Miller presented the following report for the Town of Urbanna.

Ms. Miller noted that Ms. Dianne Franck, Assistant Administrator from the Town of Urbanna was in attendance.

The Town of Urbanna adopted its Phase I program on October 16, 1991, amended it on December 21, 1992, and the Board found the Town's program consistent on March 25, 1993.

The Department initiated the revision process on May 3, 2002, provided the Town with written guidance, and met with the Town staff on June 26, 2002. Town staff and the

local Planning Commission developed revisions and Department staff provided comments on several drafts during 2002 and 2003.

On March 15, 2004, the Urbanna Town Council adopted a revised CBPA Overlay District which addresses all the required changes. While no conditions are included in the staff report, there are three minor suggestions made for clarification or ease of administration of the Overlay District.

As the Department has no recommendations for consistency, staff recommends that the local program amendments adopted by the Town be found consistent with the Act and the Regulations.

Ms. Franck expressed her appreciation for the support of staff.

MOTION: Mr. Duncanson moved that the Northern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the Town of Urbanna's amended Phase I program be found consistent with § 10.1-2019 of the Act and § 9VAC 10-20-60.1 and 2 of the Regulations.

SECOND: Mr. Sheffield.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Ms. Miller presented the following summary for the Town of West Point. She noted that West Point Mayor Andy Conklin was in attendance.

West Point adopted its Phase I program on November 6, 1991, amended it on October 26, 1992, and February 27, 1995, and the Board found the Town's program consistent on June 22, 1995.

On May 21, 2002 the Department initiated the revision process, providing Town staff with written guidance and conducting a follow-up meeting with the Town staff on October 23, 2002. Town staff and the local Planning Commission developed revisions and Department staff provided comments on several drafts during 2002 and 2003. Although the West Point Planning Commission held a public hearing and recommended the revised document to the Town Council on December 3, 2003, the Council did not adopt the revisions by the December 31, 2003 deadline in order to include the new Town Manager in the process, and to revise the Town's CBPA Overlay District map.

On March 22, 2004 the Board found the Town inconsistent and set a final compliance deadline of May 15, 2004. The deadline was not met, and on June 21, 2004 the Board

conducted an informal fact finding procedure to consider the Town's Phase I program, again finding the Town inconsistent, and authorizing the Executive Director to take appropriate action to require the Town to adopt a consistent Bay Act program.

Following a public hearing on June 28, 2004, the West Point Town Council adopted a revised CBPA Overlay District, effective immediately.

The Town's revised CBPA Overlay District text addresses all the required changes. The Town also revised its CBPA map and adopted the new map in conjunction with the CBPA Overlay District revisions. While the new map still includes areas designated as RPAs, RMAs and an IDA, there are changes in the boundaries of each type. Limited areas have been added to the IDA, and both the RPA and RMA areas have been significantly reduced in size. Several areas which include the RPA/RMA features and land types specified in Sections 9 VAC 10-20-80 and 90 of the Regulations and depicted on the USGS West Point Quadrangle and the CBPA map published by the Town in its 2000 *Comprehensive Plan* are no longer included in the Town's June 28, 2004 CBPA Map.

The Town must either demonstrate that the new map meets the requirements specified in Part III of the Regulations or amend it to meet the requirements. As a result, the one condition included in the staff report reads as follows:

1. Amend the CBPA Overlay District Map to meet the requirements of the Regulations, Part III Chesapeake Bay Preservation Area Designation Criteria, no later than December 31, 2004.

The Department's compliance evaluation process has already been initiated with the Town of West Point and it should be completed within this calendar year. While other recommendations may be made in conjunction with the compliance evaluation, due to the importance of the map's accuracy, and its impact on implementation of the local Bay Act program, it is staff's recommendation that the local program amendments adopted by the Town of West Point on June 28, 2004 be found consistent with the Act and the Regulations subject to the condition that the Town undertake and complete the recommendation contained in the staff report no later than December 31, 2004.

Mr. Davis recognized Mr. Conklin for comments.

Mr. Conklin said that like all small towns these requirements overwhelm staff taking a tremendous amount of time to evaluate and decipher. The difficulty in many cases is the legalese of the requirements. One of the difficulties with West Point has been the designation of IDA on the map. West Point is six square miles. He asked the proper scale of the map.

He said that his understanding of the original IDA map was incorrect. In other words, he said that the map done in 1991 had an appreciably larger IDA in one section of the town.

The IDA section that is on the map now is actually much smaller than original. The town is trying to find the factual evidence as to what the IDA should be.

Ms. Miller said that staff is working with the town to deal with these issues. She noted that the scale of the map is up to the town. She said that regarding the IDA, the conditions that were present at the time of the adoption of the original ordinance would dictate the extent of the IDA.

Ms. Miller said that the most significant difference that staff is now dealing with are the limits of the original CBPA's, that is, the RMA/RPA that were designated. Those were based on the USGS maps. CBLAD went through a process with the Town to include those areas and make sure they were reflected in the town map. A fairly significant amount of that area has been removed in the most recent CBPA town map. Staff is working with the town to make sure that those areas are included or, alternatively, that proposed reductions are justified.

MOTION: Mr. Duncanson moved that the Northern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the Town of West Point's amended Phase I program be found consistent with § 10.1-2109 of the Act and §9 VAC 10-20-60.1 and 2 of the Regulation subject to the condition that the Town undertake and complete the recommendation contained in the staff report no later than December 31, 2004.

SECOND: Mr. Bulova.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Local Program Reviews Compliance Evaluation

Ms. Mackey introduced Wade Hugh and Patty Dietz with the Prince William County Department of Public Works, and presented the following report regarding Prince William County.

The Department initiated the compliance evaluation in a letter dated October 3, 2003. The first meeting took place a month later with Mr. Kirste, Mr. Hugh, Mr. Mohan and Ms. Dietz. At that meeting Department staff outlined the compliance evaluation process and went through the checklist provided to County staff as an attachment to the initial letter. The County had gathered most of the information necessary to understand their program implementation and provided written responses to questions explaining their plan review process. Three additional meetings were held with Mr. Mohan and Ms. Dietz during February and March of 2004 to review site plans and conduct eleven site visits. A final meeting was held on the 2nd of August, 2004 in response to the draft staff

report. At this meeting additional information was provided Department staff that resulted in minor revisions to the report and the deletion of three recommendations. Some of the changes were the result of clarifications to staff interpretation of County policies and procedures; others resulted from programmatic changes the County implemented in response to the findings of the compliance evaluation.

There are several unique aspects of the County's program, which Ms. Mackey brought to the Board's attention. The County has a jurisdiction-wide RMA and six IDAs in the most urbanized sectors of the County. It is interesting to note that the IDAs are not limited to RPA areas, but include fairly large portions of RMA, effectively implementing additional stormwater requirements in those areas. The County is located primarily within the Occoquan watershed, and most engineers working in the County use the Occoquan Method for stormwater management calculations, a method which is more stringent than the Regulations in terms of pollutant removal requirements. In addition, the County has assumed the responsibility for maintaining about half of the BMPs located in the County, and performs random inspections of 10% of the remainder annually. The County prefers to implement regional stormwater management efforts based upon watershed planning, but has had trouble implementing those plans because of the disjointed nature in which development has occurred throughout the County in recent years. The County is very interested in Low Impact Design techniques and is actively seeking to overcome impediments to implementation in its own ordinances. The County's RPA map was developed using the NWI maps, USGS mapped tributary and intermittent streams and Soil and Water Conservation Service hydric soils. The RPA map has been incorporated into a County GIS system available over the Internet.

The County's plan of development process takes a team approach to the review of all plans and applications, involving staff from several departments and a computerized tracking database that serves as a single point of information for all review departments. County staff works closely with the public during the pre-application process so that the majority of plans and applications brought before them are approvable and few exceptions to the performance criteria are necessary.

During the compliance evaluation process, however, Department staff did identify nine areas where Prince William County's implementation of their Chesapeake Bay Program did not appear to fully comply with the Act and Regulations. These nine recommendations primarily focus on administrative and inspection procedures.

There are two recommendations concerning the minimum 100-foot RPA line that will require revisions to the Design Construction Standards Manual or DCSM, the primary implementing ordinance in the County. Staff noted several inconsistencies during the field investigation component of the compliance evaluation where the RPA line was either not present, or was shown at 50-feet. The recommendations reiterate the need for a 100-foot RPA to be shown on all plans and recorded plats and the need for that requirement to be specified in the DCSM.

There are two recommendations that concern BMPs. The first requires the County to either pursue Board approval of a Phase I modification for a stormwater management program or require formal exceptions for the placement of BMPs in the RPA. The second recommends the annual notification of those property owners responsible for BMP maintenance and inspection in order to remind them of the requirement.

Another recommendation concerns the erosion and sediment control program deficiencies identified by the Department and reiterates the importance of complying with the Corrective Action Agreement between the County and DCR. Department staff noted the impacts of inadequate E&S control on the County's Chesapeake Bay program and water quality while conducting field investigations and felt the need to reiterate the importance of compliance.

Another recommendation requires resumption of active notification of the 5-year septic pump-out requirement. At the meeting on August 2nd, the two staffs discussed further the alternatives to the septic pump-out requirement, which the County did not include when they originally amended their program. County staff said they would reconsider that decision in the near future.

Another recommendation concerns mitigation for buffer encroachments through the incorporation of revegetation practices into the DCSM. This recommendation is the result of a discovery by Department staff that the County was still using the old "Draft Buffer Equivalency" worksheet for engineering calculations used to determine mitigation measures for RPA encroachments. With the approval of the Buffer Manual by the Board last September, it is recommended that the County incorporate the revegetation practices outlined in that document as appropriate.

Another recommendation concerns the need for cross-referencing between the Chesapeake Bay requirements for utility exemptions between the DCSM and the Prince William County Service Authority utility standards manual. Currently there is no reference to the Regulatory conditions for utility exemptions in the utility standards manual, and there is a need to raise the importance of minimizing land disturbance in the RPA during utility design and construction.

Finally, Department staff recommends revision of the County vesting policy regarding Preservation Area Site Assessments (PASAs) approved or in process prior to the December 2002 ordinance amendments to be consistent with the Code of Virginia vesting provisions. During the compliance evaluation process it became clear that PASAs approved prior to the new amendments did not adequately identify water bodies with perennial flow. Old PASAs used the USGS quad maps to identify tributary streams, rather than the scientific protocols approved by the Board in September 2003. Section 9 VAC 10-20-105 of the Regulations requires site-specific refinement of the CBPA boundaries at the time of development. Since 1991, the Attorney General's office has consistently maintained that an applicant must comply to the maximum extent possible

with the Regulations, particularly with respect to the application of the 100-foot RPA buffer.

The staff report also included a number of suggested actions that should help the County improve program implementation. Suggestions are bulleted in the report and are not required for compliance. A couple of the deleted recommendations were rewritten as suggestions.

Ms. Mackey thanked County staff for their assistance during the compliance evaluation process. They were patient, informative and in many cases corrected deficiencies as soon as Staff identified them. Department staff will work closely with County staff to address and monitor the nine remaining compliance recommendations. Department staff recommends the Board find certain aspects of the County's implementation of its Phase I program not fully compliant with the Act and Regulations and that the County undertake and complete the nine recommendations contained in the staff report no later than December 31, 2005, or by the date indicated in the recommendation.

Mr. Sheffield said that the report appears very positive but asked if Ms. Mackey was recommending more on the ground work in Prince William.

Ms. Mackey said that is a fair assessment but, in defense of the county, they are booming and have limited staff. They would prefer to be out in the field more but are limited in staff.

Mr. Davis asked if the ordinance was a stand alone or is it part of a zoning ordinance.

Ms. Mackey said they have a Chesapeake Bay Preservation Area Overlay District, which is a part of the zoning ordinance. The bulk of the programmatic details are located in the DCSM, which is similar to a public facilities manual. The county has created a Chesapeake Bay Preservation Area Review Board for the review of exceptions.

Mr. Davis asked if there were comments from the county representatives.

Mr. Hugh said that the county appreciated the review. He said it pointed out some inconsistencies and housekeeping issues that need to be addressed. The county is in the process of updating the DCSM.

With respect to the Chesapeake Bay Preservation Area Review Board, Mr. Hugh said it is a five person board comprised of individuals from the engineering community, the environmental community and the wetlands boards. The Board will have their first public meeting on August 19.

Mr. Hugh said that the county does try to get out in the field for modified WQIAs for the individual property owners on a more regular basis. For larger developments one of the

changes the county is going through is requiring an environmental constraints analysis at the rezoning or preliminary plan stage.

Mr. Hugh said the county looks forward to working with staff to make the necessary changes.

Mr. Davis asked about the redevelopment requirement of 20% as opposed to 10% reduction. He asked how that is being received since it exceeds the regulations.

Ms. Dietz said that the county has a redevelopment overlay district and usually encourages vegetative buffers. Usually suggestions are well received.

Mr. Crafton asked if the higher standard was because of the Occoquan standards, noting that much of the county drains to the Occoquan drinking water supply and that there were strict requirements that were in place before the CBPA.

Mr. Bulova asked if the county had an idea of how much area was actually involved in the grandfathering or vesting.

Mr. Hugh said that the county is reviewing that at this time. The vesting policy is for five years.

Mr. Bulova asked if the county would have particular issues with the recommendations and if there were items that are particularly problematic.

Mr. Hugh said at the previous meeting with staff, the county walked through the issues. Some of the recommendations may be more challenging than others, but he did not believe there would be significant problems.

Mr. Bulova noted that all of the recommendations except the vesting had a date of 2005.

Ms. Mackey said that the BMP recommendation was 2004, but she noted that staff can work with that date and that BMPs can be permitted through the exception process. She noted that anything that required an ordinance change was set for 18 months to allow time for the process.

Mr. Crafton said that there is discussion going on between the development industry at large and DCR over the longstanding interpretation that applicants must comply to the degree feasible regarding buffers and RPA requirements. Based on advice from the OAG, that the test continues to apply and staff gave that guidance to the county.

Mr. Davis noted that Ms. Mackey had indicated that Prince William had low impact development. He asked if they had cluster developments which would include large areas of open space or where these strictly conventional type subdivisions.

Ms. Mackey said that to her knowledge the county attempts to implement this through the development process.

Ms. Dietz said the county does have some cluster developments.

MOTION: Mr. Bulova moved that the Northern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the Board find that certain aspects of the Prince William County's implementation of its Phase I program do not fully comply with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations and further that the Committee concur with the staff recommendation that Prince William County undertake and complete the nine (9) recommendations contained in the staff report no later than either December 31, 2004 or December 31, 2005, as noted in the individual recommendations.

SECOND: Mr. Sheffield

DISCUSSION: None.

VOTE: Motion carried unanimously.

Ms. Baldwin gave the following summary for Northumberland County.

She extended the County's regrets that none of its staff could make today's meeting. Mr. Shirley, who is the Zoning Administrator and oversees the County's Bay Act program, in particular, stated that while he very much wanted to make today's meeting, his current workload would just not permit. He did ask that she share with the Board a letter from the County with their comments on the recommendations listed in the staff report. She offered to summarize the correspondence at the end of her presentation.

The Department initiated the compliance evaluation for Northumberland County in a letter dated November 25, 2003. Department staff met with Mr. Kenny Eades, County Administrator, Mr. Luttrell Tadlock, Assistant County Administrator, and Mr. W.H. Shirley, Zoning Administrator in February 2004. A second meeting was held later in the month, at the County offices to review site plans and discuss the County's site plan review process. At that second meeting, Department staff reviewed a total of 11 site plans. On March 26, 2004, five of the site plans reviewed were selected for site visits and three additional site plans were reviewed with one of these reviews leading to an additional site visit.

During the course of the evaluation, Department staff identified areas where Northumberland County's implementation of its program does not appear to fully comply with the Act and Regulations. Staff would like to note that four of the nine recommendations are similar to the ones identified during Richmond County's

compliance evaluation and which have also been cited from compliance evaluations of other rural localities.

Three of the nine recommendations identified in this report pertain to wetland permits and E&S permitting for shoreline erosion control projects. First, the County must begin to require evidence of wetland permits before issuing any of its land disturbing permits. Second, the County must require erosion and sediment control permits for shoreline erosion control projects when the area of disturbance in the RPA exceeds 2,500 square feet. Finally, the County must require a WQIA for shoreline erosion control projects and ensure that such projects meet the criteria outlined in the Regulations. This means that such projects are necessary, based on best technical advice, and appropriate vegetation is established to stabilize the shoreline and restore the buffer.

The next two recommendations concern the BMP and stormwater management performance criteria. First, Northumberland County has not required maintenance agreements on any of the BMPs that have been permitted and, as with many other localities, it has not established a formal procedure such as a database for tracking and inspecting them. Given the County's previous policy of permitting encroachments into the buffer provided that BMPs were installed to compensate for the encroachment, this lack of recordation and inspection is especially problematic. To fully comply with the Regulations, the County must begin to record all BMPs and establish a means to ensure routine maintenance and inspection. Second, in addition these deficiencies, the County has allowed and used design standards for certain BMPs that are not consistent with the Virginia Stormwater Management Handbook or other standards of good engineering practices. The County must ensure that BMP design and siting requirements are consistent with the Virginia Stormwater Management Regulations.

The next recommendation concerns septic pump out requirements. As with other localities, Northumberland County has not established its septic tank pump-out notification and enforcement program. This program is required by the County's ordinance as well as by the Regulations. Given the County's primarily reliance on septic systems, implementation of this aspect of their local program is highly important.

The next two recommendations pertain to RPA development criteria. First, the Department recommends that Northumberland County begin to require Water Quality Impact Assessments for any land disturbance, development, or redevelopment in a Resource Protection Area. While the Department recognizes that many elements of a WQIA would be considered during a site plan review, the County must develop a means to document the actual WQIA. Secondly, the County has historically allowed vegetation under 6 inches DBH to be removed in the RPA and has based this practice on one subsection of the general performance criterion pertaining to indigenous vegetation. This particular section, however, is relevant to both RMA and RPA. The more stringent criterion for removal of vegetation in the RPA clearly states that vegetation may only be removed for one of four conditions, sightlines, access paths, general woodlot management, and shoreline erosion. The County must begin to ensure that when

approving the removal of vegetation in the buffer, it is consistent with the Regulations and based on one of the four conditions cited.

The final recommendation is to ensure that administrative waivers are not approved for those encroachments into the RPA that require a formal exception and public hearing. Prior to its ordinance revisions, the application for placement of an accessory structure such as a pool or shed in the RPA had been processed administratively. The County must ensure that such requests will now be subject to the formal process and respective findings.

The staff report also includes some suggestions, which might assist the County with improving certain aspects of implementation of their local program. These suggestions are bulleted in the report and are not required for compliance.

The report also notes some of the innovative approaches the County has taken to assist in meeting the requirements of the Regulations. In particular, the landscape agreement, which documents vegetation replanting requirements, should prove to be a valuable tool and one that other localities may be interested in using.

Department staff would like to acknowledge the generous assistance and openness of Northumberland County staff especially its Zoning Administrator. Without such generosity and frank communication, the evaluation of the local program would not be as accurate or as comprehensive.

In closing, Department staff recommends that the Board find that certain aspects of the County's implementation of its Phase I program do not fully comply with the Act and Regulations and that the County undertake and complete the nine recommendations contained in the staff report no later than September 30, 2005.

As stated previously, the County has provided written comments on most of these recommendations. The County is essentially in agreement with these recommendations although with certain caveats on a few of them. With respect to the pump-out recommendation, the County commented that it would initiate the notification process once funding sources were available to retrofit the Reedville sewage treatment plant to receive septage. With respect to maintenance agreements, the County responded that it would develop such agreements, but only for BMPs that encroach into the buffer.

Mr. Sheffield said that there was a similar issue in Stafford regarding early issuance of land disturbing permits. He asked if the county could meet the September 2005 deadline.

Ms. Baldwin said that the county has seen the report.

Mr. Sheffield said that he would like to see an interim report back after six months.

Mr. Crafton said this has been done with other counties.

MOTION: Mr. Sheffield moved that the Northern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the Board find certain aspects of the county's implementation of its Phase I program do not fully comply with §§10.1-2019 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations and that Northumberland County undertake and complete the nine recommendations contained in this staff report no later than September 30, 2005.

SECOND: Mr. Duncanson

DISCUSSION: None.

VOTE: Motion carried unanimously.

Other Business

Mr. Crafton distributed information regarding the three newly appointed members to the Board. Mr. Bulova serves on the Northern Area Review Committee.

Mr. Davis noted that it would be important to schedule board training from the Office of the Attorney General as soon as possible. Mr. Crafton noted that would be done at the September meeting.

Ms. Little said that staff has tentatively planned a fall Board retreat.

Mr. Maroon noted that with the merger of CBLAD into DCR it would be helpful to provide a basic orientation for Board members. He also noted that perhaps some of the future meetings could be held at alternative locations.

Language in the budget bill that deals with the merger requires the Department of provide a report to the House Appropriations and Senate Finance Committees by the end of August. Board members will receive a copy of that report.

Mr. Duncanson noted that with regard to regional BMPs and LID, there seems to be a clash coming. Some localities have adopted LID standards and now that they want a small rain garden the benefits of a regional BMP may be lost.

Ms. Little said that there are two paths. The LID movement seems to be getting stronger in localities. Ordinances are being developed which sometimes require onsite techniques. Or there are localities which prefer a more regional approach.

Mr. Maroon noted that there is currently an LID study committee that is grappling with this issue.

Mr. Crafton noted that the study committee has addressed the issue that LID does not work everywhere. He noted that requirements should be flexible enough to allow for both technologies.

Mr. Bulova noted that the real challenge will be the maintenance aspect.

Mr. Sheffield asked where the department was with enforcement with regard to actions taken at the June meeting.

Mr. Maroon reported that the staff has met with the City of Richmond and Chesterfield County. Progress on resolving these matters appears to be underway.

Mr. Crafton noted that Chesterfield has filed an appeal of the Board's finding.
Mr. Chaffee has written the county back indicating that he does not believe the county has legal basis for the appeal.

Mr. Maroon also noted that there is a meeting set with Lancaster County for early September. The deadline for other appeals has now passed.

Mr. Sheffield noted that now that these issues have been identified that the Board should move ahead vigorously with enforcement.

There being no further business, the meeting was adjourned.